N.D.A.G. Letter to Noack (Nov. 2, 1988)

November 2, 1988

Mr. Fabian E. Noack
Attorney at Law
P.O. Box 15
Carrington, ND 58421

Dear Mr. Noack:

Thank you for your letter concerning the use of tax moneys levied pursuant to N.D.C.C. § 57-15-28.1(2), (6). I apologize for the delay in responding to you.

Your question of whether or not a political subdivision, other than a school district, may use the funds currently segregated in an insurance reserve fund established pursuant to N.D.C.C. § 32-12.1-08 to pay the premium for liability insurance was resolved in Attorney General's Opinion 85-28 (1985 N.D. Op. Att'y Gen. 96). A copy of that opinion is included for your review. Accordingly, moneys raised from a levy pursuant to N.D.C.C. § 57-15-28.1(2) may be used for the purpose of paying liability insurance premiums, including payments to the North Dakota Insurance Reserve Fund.

However, it is my opinion that the city of Carrington may not use moneys raised pursuant to N.D.C.C. § 57-15-28.1(2) for payment of property insurance premiums such as those paid to the North Dakota Fire and Tornado Fund.

N.D.C.C. § 32-12.1-08(2) provides as follows:

> 32-12.1-08.   Political   subdivision insurance reserve fund -- Tax levy.
>
> . . . .
>
> 2.   Except in the case of a school district, the fund established pursuant to this section shall be kept separate and apart from all other funds and shall be used only for the payment of claims against the political subdivision which have been settled or compromised, judgments rendered against the political subdivision for injuries arising out of risks established by this chapter or costs incurred in the defense of claims. Payments by a school district for the same purposes shall be made out of the district's general fund as established in section 57-15-14.2.

(Emphasis supplied).

N.D.C.C. § 32-12.1-02 provides as follows:

32-12.1-02. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Claim" means any claim permitted by this chapter brought against a political subdivision for an injury caused by a political subdivision or an employee of the political subdivision acting within the scope of the employee's employment or office.

4. "Injury" means personal injury, death, or property damage. Personal injury includes sickness or disease sustained by any person caused by a political subdivision or an employee thereof. Property damage includes injury to or destruction of tangible property caused by a political subdivision or an employee thereof.

The Fire and Tornado Fund insures buildings owned by the state, state industries, political subdivisions, and winter shows against certain losses to buildings, fixtures, and permanent contents of such buildings. N.D.C.C. § 26.1-22-02. It does not insure for those claims or losses defined by N.D.C.C. § 32-12.1-02(1), (4). Based upon these express statutory provisions, the moneys raised for an insurance reserve fund may not be used to pay property insurance premiums such as those to the North Dakota Fire and Tornado Fund.

Your second question concerns the use of N.D.C.C. § 57-15-28.1(6) tax moneys to pay the premiums of the city employees' health insurance program. N.D.C.C. § 57-15-28.1(6) provides as follows:

57-15-28.1. Exceptions to tax levy limitations in political subdivisions.

6. A <u>county</u> levying a tax for comprehensive health insurance employee benefit programs in accordance with section 52-09-08 may levy a tax not exceeding four mills.

(Emphasis supplied).

Only counties may levy taxes pursuant to N.D.C.C. § 57-15-28.1(6). Additional support for this limitation is found in N.D.C.C. § 52-09-08(3) in which it states, in part, that "[w]ithin the levy limitations set out in subsection 6 of section 57-15-28.1, the governing body of a county may levy a tax for comprehensive health care insurance employee benefit programs duly established by the governing board."

Therefore, a city may not impose an excess mill levy pursuant to N.D.C.C. § 57-15-28.1(6).

I hope this information is helpful to you.

Sincerely,

Nicholas J. Spaeth

ja
Enclosure